

AN ORDINANCE BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS AMENDING CHAPTER 122 FLOODPLAIN REGULATIONS, CREATING SECTION 122-8 PROVIDING FOR INCLUSION OF UNITED STATES FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) AND UNITED STATES FISH AND WILDLIFE SERVICE (FWS) REQUIREMENTS IN PERMIT REFERRAL PROCESS IMPLEMENTATION AND DETERMINATIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR TRANSMITTAL TO THE STATE LAND PLANNING AGENCY AND THE SECRETARY OF STATE; PROVIDING FOR CODIFICATION; PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the National Flood Insurance Program (NFIP) is a Federal program enabling property owners in participating communities to purchase flood insurance in exchange for the community's adoption of floodplain management regulations to reduce future flood damages; and

WHEREAS, in 1990 the National Wildlife Federation, Florida Wildlife Federation, and the Defenders of Wildlife filed suit against the Federal Emergency Management Agency (FEMA) claiming FEMA was not consulting with the U.S. Fish and Wildlife Service (FWS or Service) as required by the Endangered Species Act in their administration of the National Flood Insurance Program (NFIP) in Monroe County, Florida; and

WHEREAS, in 1997 the Service completed a Biological Opinion (BO) for the effects of the NFIP on Federally listed (threatened or endangered) species in the Florida Keys; and

WHEREAS, the 1997 BO found the NFIP jeopardized nine species in the Keys; and

WHEREAS, in 2003 the Service re-initiated consultation and amended the 1997 BO and concluded that the effect of the NFIP would result in jeopardy on eight of 10 species evaluated in the BO; and

WHEREAS, in a second amended complaint in 2003 the plaintiffs filed suit against FEMA and the Service pursuant to the Endangered Species Act and the Administrative Procedures Act; and

WHEREAS, on March 29, 2005 the United States District Court, Southern District of Florida (District Court) granted summary judgment in favor of the Plaintiffs which found that the Service and FEMA violated the Endangered Species Act and the Administrative Procedures Act; and

WHEREAS, on September 9, 2005, the District Court entered an order enjoining FEMA from issuing flood insurance under the NFIP on any new residential or commercial developments in suitable habitats of federally listed (threatened or endangered) species in the Keys; and

WHEREAS, the District Court also ordered the Service to submit a new BO by August 9, 2006. The Service issued a new BO on August 8, 2006; and

WHEREAS, on April 1, 2008, the United States Court of Appeals for the Eleventh Circuit affirmed the District Court's rulings of March 29, 2005 and September 9, 2005; and

WHEREAS, On February 26, 2009, the District Court ordered the Service to submit a new BO by March 31, 2010 and on March 28, 2010, the Court granted a 30 day extension of this deadline; and

WHEREAS, on April 30, 2010, the Service published the revised BO for FEMA's administration of the NFIP in Monroe County; and

WHEREAS, the BO contains "Reasonable and Prudent Alternatives" (RPA's) that require Monroe County and other participating communities in the Florida Keys to revise their Flood Damage Prevention Ordinance(s) to reference and use the updated real estate list (referenced in RPA paragraph 1) within 120 days of acceptance of this BO by the Court, and;

WHEREAS, on January 11, 2011, the District Court approved a Settlement Agreement between the Plaintiffs and the Federal Defendants in which the Federal Defendants agreed to notify the Court and the parties when Monroe County and the other "participating communities" in the Florida Keys have: 1) revised their Flood Damage Prevention Ordinance(s); and 2) implemented procedures to reference and use the updated real estate list and Species Focus Area Maps (referenced in reasonable and prudent alternative ("RPA") paragraph 1) in compliance with paragraphs 2, 3, 4, and 5 of the RPA; and

WHEREAS, on December 2, 2011, FEMA notified Monroe County that if the County did not implement the RPA's by January 11, 2012, then Monroe County would have been placed on probation on May 10, 2012. In response to the County's requested time extension, FEMA requested and the Court granted an extension to June 30, 2012 for the ordinance revisions and permit referral process implementation; and

WHEREAS, the County Attorney, outside counsel, and the Growth Management Director have advised the Board that adoption of the RPA's; ordinance language; and originally drafted Species Assessment Guides (SAGs) suggested by the Federal agencies would have resulted in increased exposure to the County for liability for inverse condemnation or takings claims; and

WHEREAS, FEMA and the Service revised the SAGs to include provisions that substantially reduce the County's potential exposure for liability for inverse condemnation or takings claims; and

WHEREAS, FEMA provided comments on the County's DRAFT Ordinance, transmitted by the County to FEMA on various dates; and

WHEREAS, because the Florida Constitution prohibits the County from incorporating future federal statutes and regulations into its existing ordinances, the County is unable to adopt the "subsequent revisions" to the Species Focus Area Maps (SFAMs) or Species Assessment Guides

(SAGs) into this ordinance as desired by FEMA, until the subsequent revisions are published and adopted by the then sitting Board of County Commissioners pursuant to the process set forth in Florida law; *see, e.g., Abbott Laboratories v. Mylan Pharmaceuticals*, 15 So.3d 642 (Fla. 1st DCA 2009); and

WHEREAS, the County has revised said ordinance; and

WHEREAS, the Florida Legislature adopted Chapter 2012-205 Laws of Florida, effective July 1, 2012, which states:

“For any development permit¹ application filed with the county after July 1, 2012, a county may not require as a condition of processing or issuing a development permit that an applicant obtain a permit or approval from any state or federal agency unless the agency has issued a final agency action that denies the federal or state permit before the county action on the local development permit. Issuance of a development permit by a county does not in any way create any rights on the part of the applicant to obtain a permit from a state or federal agency and does not create any liability on the part of the county for issuance of the permit if the applicant fails to obtain requisite approvals or fulfill the obligations imposed by a state or federal agency or undertakes actions that result in a violation of state or federal law. A county may attach such a disclaimer to the issuance of a development permit and may include a permit condition that all other applicable state or federal permits be obtained before commencement of the development. This section does not prohibit a county from providing information to an applicant regarding what other state or federal permits may apply.”; and

WHEREAS, the County Attorney, outside counsel, and the Growth Management Director have proposed an ordinance with alternative language to meet the RPAS, which is consistent with Federal law, addresses Chapter 2012-205, Laws of Florida, and adequately protects the County taxpayers against accepting that additional liability; and

WHEREAS, the September 9, 2005 District Court injunction will only be lifted by the Court if the FWS Biological Opinion and Reasonable and Prudent Alternatives, which requires property owners within the species focus areas and buffer areas to go through the Permit Referral Process, are implemented by each of the participating communities; and

WHEREAS, any property owner has an obligation to comply with the Federal Endangered Species Act; and

WHEREAS, the County has an obligation to comply with the Federal Endangered Species Act; and

¹ For the purposes of Chapter 2012-205 Laws of Florida, the definition of Development Permit is: “Development permit” includes any building permit, zoning permit, subdivision approval, rezoning, certification, special exception, variance, or any other official action of local government having the effect of permitting the development of land.

WHEREAS, subject to resolutions 420-2005; 166-2006; 185-2007; 219-2008 and 282-2011, property owners are able to "toll" their building permits and ROGO allocations because they were not eligible for flood insurance as a result of the September 9, 2005 District Court injunction; and

WHEREAS, the only way the Court will terminate the 2005 District Court injunction is if participating communities comply with the BO RPA's; and

WHEREAS, this Ordinance is being adopted to provide owners with tolled building permits and/or ROGO allocations a way to develop in a manner consistent with the Endangered Species Act and that will be eligible for national flood insurance; and

WHEREAS, the Monroe County Planning Commission during a regular meeting held on April 25, 2012, reviewed, discussed and approved the Sr. Director of Planning and Environmental Resources' recommendation to the Planning Commission for the revisions to Chapter 122 of the Monroe County Land Development Code;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA:

Section 1. Section 122-2 of the Monroe County Land Development Code shall be amended as follows:

Sec. 122-2. General provisions.

(a) Applicability. Except as provided for the elevated portion of a nonconforming residential structure by section 122-4(a) (10), no structure or manufactured home hereafter shall be located, extended, converted or structurally altered, and no development shall occur, without full compliance with the terms of this chapter in addition to other applicable regulations, including, but not limited to, 44 CFR 60.3(a)(2).

(b) Basis for Establishing Special Flood Hazard Maps; Species Focus Area Maps (SFAMs) with Species Focus Area Buffers and Federally Protected Species Area Real Estate (RE) List; and Species Assessment Guides (SAGs).

1. The areas of special flood hazard identified by the Federal Emergency Management Agency (FEMA) in its February 18, 2005 Maps with accompanying supporting data, and any revisions thereof, are adopted by reference and declared to be a part of this chapter, and shall be kept on file, available to the public, in the offices of the county Building Department. Letter of Map Amendments, Letter of Map Revisions, Letter of Map Revision Based on Fill, and Conditional Letter of Map Revisions approved by FEMA are acceptable for implementation of this regulation.

2. Species Focus Area Maps (SFAMs) with Species Focus Area Buffers and Species Real Estate (RE) List. FEMA and FWS have provided the Species Focus Area Maps (SFAMs) mailed to Monroe County and dated April 30, 2011, and a listing of real estate numbers of parcels (RE list) emailed to Monroe County and dated November 18, 2011, that are within the SFAMs and that have been identified by FWS. The SFAMs and the RE List that are within the SFAMs identified by the FWS in accordance with the Biological Opinion, dated April 30, 2010, as amended December 14,

2010, are hereby declared to be a part of this ordinance. The SFAMs and RE list are on file at the Monroe County Clerk's office and the Monroe County Growth Management Division Office.

3. Species Assessment Guides (SAGs). FEMA and FWS have provided the Species Assessment Guides (SAGs) mailed to Monroe County and dated May 20, 2012. These SAGs are declared to be a part of this ordinance. The SAGs are on file at the Monroe County Clerk's office and the Monroe County Growth Management Division Office.

(c) Rules for interpreting flood hazard issues. The boundaries of the flood hazard areas shown on the official flood insurance rate maps may be determined by scaling distances. Required interpretations of those maps for precise locations of such boundaries shall be made by the floodplain administrator, in consultation with the building official. In interpreting other provisions of this chapter, the building official shall be guided by the current edition of FEMA's 44 CFR, and FEMA's interpretive letters, policy statements and technical bulletins as adopted by resolution from time to time by the Board of County Commissioners. Additionally, the building official shall also obtain, review and reasonably use any base flood elevation and floodway data available from a federal, state or other source, as criteria for requiring that new construction, substantial improvements, and other developments meet the criteria required in the appropriate flood zone.

Section 2. Sec. 122-3 of the Monroe County Land Development Code shall be amended as follows:

Sec. 122-3. – Permit requirements.

(a) The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Adjacent to contiguous native habitat means an area of native habitat sharing a boundary at one or more points of intersection with other native habitat. For purposes of this land development code, an intervening road, right-of-way or easement shall not destroy the adjacency of the habitat. However, U.S. 1, canals and open water shall constitute a break in adjacency.

Alteration means any change or modification in construction type, materials, or occupancy.

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year.

Basement means any area of the building having its floor subgrade (below ground level) on all sides.

Development means any manmade change to improved or unimproved real estate, including, but not limited to, buildings or other structures, clearing, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Elevated building means a nonbasement building that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Enclosure means that portion of an elevated building below the lowest elevated floor that is either partially or fully shut in by rigid walls and used solely for limited storage, parking or entryways. Enclosures shall not be constructed, equipped or used for habitational or other purposes.

Existing construction means structures for which the start of construction commenced before January 1, 1975. Existing construction is also known as pre-FIRM structures.

Existing manufactured home park means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of the streets, and either final site grading or the pouring of concrete pads) is completed before January 1, 1975, and in which, at the time of application, there are no site built residences or the park or subdivision is limited to manufactured home by this chapter.

Finishing materials means anything beyond basic wall construction pursuant to the most recent FEMA Technical Bulletin, which is normally associated with habitable space. Finishing materials include, but are not limited to, ceiling mold, trim, baseboards, decorative finish work, wainscoting, and textured woods.

Historic Structure means any structure that is:

- (a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
- (b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
- (c) Individually listed on state inventory of historic places in states with historic preservation programs which have been approved by the Secretary of the Interior; or
- (d) Individually listed on a County inventory of historic places in communities with historic preservation programs that have been certified either:
 - (1) By an approved state program as determined by the Secretary of the Interior, or
 - (2) Directly by the Secretary of the Interior in states without approved programs.

Illegal Structure or Use means a structure or use that is not a legal structure or legal use as defined in this chapter.

Legal Structure means a structure that was permitted by the floodplain regulation in effect at the time construction commenced on the structure in its current configuration and received a permit or final inspection or certificate of occupancy for the structure in its current configuration.

Legal Use means a use that was permitted by the floodplain regulations at the time the use commenced on the property.

Limited storage means that which is incidental and accessory to the principal use of the structure. For example, if the structure is a residence, storage should be limited to items such as lawn and garden equipment, tires, and other low damage items which will not suffer flood damage or can be

conveniently moved to the elevated part of the building. Flood insurance coverage for enclosures below the Base Flood Elevation (BFE) is very limited.

Lowest Floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this chapter.

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term also includes park trailer, travel trailers, and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property.

Market value means the county property appraiser's value of the structure plus 20 percent. A uniform appraisal report for determination of market value submitted by the applicant may be used if the county building official considers such appraisal consistent with local construction costs. Where appraisal is not accepted because it appears to be inconsistent with local construction costs an applicant may request review by an independent third party appraiser duly authorized by the county. The cost of independent review shall be borne by the applicant. The reviewing appraiser shall determine if the appraisal value reasonably reflects an appropriate value of the structure. The independent appraiser's determination shall be in writing. Professionals preparing appraisal shall be required to possess certifications as state certified residential appraisers for appraising one to four family residential properties and state certified general appraisers for all other properties including commercial and multi-residential

New construction means those structures for which the start of construction commenced on or after January 1, 1975. New construction is also known as post-FIRM structures.

Nonconforming structure means a below base flood elevation structure or a portion thereof (such as an enclosure, materials with no openings, flood resistant materials), which was lawfully existing or permitted, and is not fully compliant with the terms of this chapter. A nonconforming structure shall remain subject to the terms of this chapter.

Notice to proceed means written authorization by the County Growth Management Division to the permittee authorizing permitted development to begin.

Pure manufactured home park means a manufactured home park that at the time of application has no site-built residences or a park or subdivision which is limited to manufactured homes only by this chapter.

Recreational vehicle means a vehicle that is:

- (1) Built on a single chassis;
- (2) Four hundred square feet or less when measured at the largest horizontal projection;

- (3) Designed to be self-propelled or permanently towable by a light duty truck; and
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.

Start of construction means (for other than new construction or substantial improvements under the Coastal Barrier Resources Act) includes substantial improvements, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement was within 180 days of the permit date. For substantial improvements the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building whether or not the alteration affects the external dimensions of the building. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to it's before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. All structures that are determined to be substantially damaged are automatically considered to be substantial improvements, regardless of the actual repair work performed. If the cost necessary to fully repair the structure to its before damage condition is equal to or greater than 50% of the structure's market value before damages, then the structure must be elevated (or flood proofed if it is non-residential) to or above the Base Flood Elevation (BFE), and meet other applicable NFIP requirements. Items that may be excluded from the cost to repair include plans, specifications, survey costs, permit fees, and other items which are separate from the repair. Items that may also be excluded includes demolition or emergency repairs (costs to temporarily stabilize a building so that it's safe to enter to evaluate and identify required repairs) and improvements to items outside the building, such as the driveway, septic systems, wells, fencing, landscaping and detached structures.

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage, "regardless of the actual repair work performed. The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local building official and which are the minimum necessary to assure safe living conditions; or
2. The cost of repairs required to remedy health, safety, and sanitary code deficiencies can be deducted from the overall cost of an improvement, but only if:
 - a. an appropriate regulatory official such as a building official, fire marshal, or health officer was informed about and knows the extent of the code related deficiencies, and

- b. the deficiency was in existence prior to the damage event or improvement and will not be triggered solely by the fact that the structure is being improved or repaired.

In addition, for any repair required to meet health, sanitary, and safety codes, only the minimum necessary to assure safe living conditions should be deducted, including those improvements required by Chapter 11, 2012 Florida Accessibility Code. Costs of repairs that are in excess of the minimum necessary for continued occupancy or use will be counted toward the cost of the overall improvement; or

- 3. Any alterations of a "historic structure," provided that the alteration will not preclude the structure's continued designation as a "historic structure."

Floodplain management requirements for new construction apply to substantial improvements.

Supplemental Information for Substantial Improvement

The basic types of improvements that could be made to structures include but are not limited to rehabilitations or reconstructions that do not increase square footage, and lateral or vertical additions that do increase square footage.

Rehabilitation or reconstruction would be a partial or complete "gutting" and replacement of internal workings and may or may not include structural changes. If this action is substantial, i.e., over 50 percent of the structure's market value, it is considered new construction, and the entire building must be elevated to or above the Base Flood Elevation (BFE) (or floodproofed if the building is non-residential).

For a lateral addition, if the substantial improvement is to add a room or rooms outside the footprint of the existing building, only the addition is required to be elevated to or above the BFE, i.e.; the existing building does not have to be elevated. If the proposed lateral addition also includes rehabilitation or remodeling of the existing building, then the whole project as a combination of work must be considered. Vertical additions would require that the entire structure be elevated to or above the BFE. Even though the improvement itself is entirely above the BFE, it is dependent on the walls and foundation of the existing building for structural support.

(b) Except for work specifically exempted under chapter 6, the building official shall require building permits/Floodplain Development Permits for all proposed construction or other improvements within areas of special flood hazard. In addition to the standard requirements for a building permit, an application for a building permit for construction or improvements within areas of special flood hazard shall contain the information and certifications set forth in a form provided by the Building Official.

(c) All building foundations shall rest directly on natural rock, on concrete piling driven to rock or on friction piling (concrete or wood) and shall be anchored to such rock support by holes, 16 inches in minimum diameter, augured into such rock a minimum depth of three feet and reinforced by a minimum of four #5 vertical rods extending up into the piers above a minimum of 18 inches and tied to the vertical steel of the pier. Wooden pilings shall be locked into 16-inch auger foundations by at least a #5 rebar extending through the piling and three to five inches beyond.

(d) The permit holder shall provide a floor elevation after the lowest floor is completed or, in instances where the structure is subject to the regulations applicable to coastal high-hazard areas,

after placement of the lowest horizontal structural members of the lowest floor. Floodproofing certification for nonresidential structures in A-Zones shall be provided prior to a certificate of occupancy or prior to final inspection.

(e) Within 21 calendar days of establishment of the lowest floor elevation, or upon placement of the lowest horizontal structural members of the lowest floor, whichever is applicable, it shall be the duty of the permit holder to submit to the building official a certification of the elevation of the lowest floor within A zones or the lowest portion of the lowest horizontal structural members of the lowest floor within V zones, whichever is applicable, as built in relation to mean sea level. Such certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by the same. When floodproofing is used for a building within A zones, the certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work done within the 21-day period and prior to submission of the certification shall be at the permit holder's risk. The building official shall review the floor elevation survey data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the survey or failure to make the corrections required hereby shall be causes to issue a stop-work order for the project.

(f) The degree of flood protection required in this chapter is reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This chapter does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This chapter shall not create liability on the part of the county or any officer or employee thereof for any flood damages that result from reliance on this chapter or any administrative decision lawfully made thereunder.

Section 3. The Monroe County Land Development Code is amended by adding Section 122-8 as follows:

Sec. 122-8. Inclusion of United States Federal Emergency Management Agency (FEMA) and United States Fish and Wildlife Service (FWS) Required Permit Referral Process (PRP) in Final Permit Determinations for Development

- (a) Purpose and intent. It is the purpose of Section 122-8 to implement regulations that will assure, consistent with the 10th Amendment to the U.S. Constitution, state and County regulations, proper record retention, coordination, and notification of FEMA and FWS regarding permit applications filed with or issued by Monroe County, inclusive of FEMA/FWS requirements agreed to by the applicant.
- (b) Lands to which this Section apply. See Section 122-2 (b) 2.
- (c) Rules for interpreting SFAMs. The boundaries of the flood hazard areas shown on the FWS SFAMs may be determined by scaling distances. Required interpretations of those maps for precise locations of such boundaries shall be made by the County Planning Director or his/her designee, in consultation with the building official.
- (d) Administration of Development Approval in Species Focus Areas.

1. SFAM Review Required. For parcels or lots shown within the SFAMs in which an application for development permit has been made, if the SFAM indicates the parcel or lot contains only unsuitable habitat for any of the following species: Key Largo Cotton Mouse, Key Largo woodrat, Key tree-cactus, Lower Keys marsh rabbit, Eastern indigo snake, Key deer, Schaus swallowtail butterfly, silver rice rat, and Stock Island tree snail, and the parcel or lot is not listed on the RE list, the Planning Director or his/her designee shall provide for a notation in the development application permit files that indicates:

a. The name of the official that reviewed the development application for FWS requirements;

b. The date of the review;

c. The date of the SFAM and RE list used to conduct the review.

Once the review has established that a parcel or lot contains unsuitable habitat, action may be taken on the permit application for development by Monroe County staff.

2. FWS Technical Assistance Permit Requirements. For parcels or lots shown within the SFAMs in which an application for a permit for development has been made including 1) expanding the footprint of a structure; and/or 2) expanding clearing in habitat (including native vegetation removal); and/or 3) placement of fencing into key deer habitat, if the SFAM indicates the parcel or lot contains suitable habitat for any of the following species: Key Largo Cotton Mouse, Key Largo woodrat, Key tree-cactus, Lower Keys marsh rabbit, Eastern indigo snake, Key deer, Schaus swallowtail butterfly, silver rice rat, and/or Stock Island tree snail, and the parcel or lot is listed on the RE list, the Planning Director or his/her designee shall use the SAGs to determine whether a floodplain development permit application requires:

a. incorporation of FWS SAG requirements as conditions into the Monroe County permit and the County may issue the permit, pursuant to all applicable codes; or

b. if, according to the SAGs, the proposed development needs technical assistance by the Service, the County shall issue the permit in accordance with Chapter 2012-205, Laws of Florida, indicating a Notice to Proceed must be obtained prior to any construction, removal of vegetation, or commencement of development, with a condition that:

i. the applicant seek and obtain technical assistance from the Service; and

- ii. the applicant obtain, prior to the issuance of the Notice to Proceed, all applicable state or federal permits or approvals pursuant to Section 122-2 (a); and
- iii. In accordance with the Florida Building Code and Monroe County Section 6-103 (b), the permit shall expire after 180 days; and
- iv. If the permit expires, the applicant shall be required to reapply for the permit.

c. For a floodplain development permit application that requires the Services' technical assistance, Monroe County shall provide the application to the Service weekly. Based on the Services technical assistance, the applicant shall submit the FWS written requirements to the County. If the applicant agrees to the FWS requirements, in writing, Monroe County may then issue a NOTICE TO PROCEED that includes the technical assistance requirements, provided by the federal agency to avoid possible impacts on federally listed (threatened or endangered) species, as conditions in the Monroe County permit.

d. For a development permit application that requires mitigation and/or compensation for adverse effects to native habitat, monetary compensation generated will be applied to restoration and/or purchase of native habitat.

e. The County shall maintain an applicant acceptance form, of the Service requirements, in the permit file.

f. For purposes of this Chapter the Notice to Proceed shall be written authorization from the Monroe County Growth Management Division to the permittee that the permitted development activities may begin.

g. If the parcel is within an area previously covered by a Habitat Conservation Plan, and where that Habitat Conservation Plan has expired at the time of development permit application, the County shall apply this Permit Referral Process, unless mitigation was completed for the associated impacts.

h. If the property owner does not agree to the FWS technical assistance requirements to be included in the development permit as conditions, the County shall not issue the notice to proceed and shall rescind the previously issued development permit.

i. For properties located in Key Largo wood rat, Key Largo cotton mouse, silver rice rat and Lower Keys marsh rabbit

habitat, property owners shall agree to execute and record a covenant restriction in favor of Monroe County which prohibits free ranging cats. This requirement alleviates direct and cumulative loss of species habitat which will not negatively impact the total number of new residential permits that may be issued under Species Assessment Guides (SAGs).

3. Provision for Flood Hazard Reduction and Avoiding impacts on federally listed (threatened or endangered) species Enforcement. All proposed development shall meet the conditions established on the floodplain development permit and/or notice to proceed, which includes FWS technical assistance requirements included as conditions on the Monroe County development permits, to avoid possible impacts on federally-listed species (threatened or endangered). Violation of this Chapter, including any development constructed not in accordance with the FWS requirements, included as conditions on the Monroe County development permit, derived through use of the SAGs or through technical assistance by FWS, are hereby deemed to be violations of the County Code and may be enforced utilizing the administrative enforcement procedures set forth in Chapter 8, Monroe County Code of Ordinances. Further, Section 118-11 shall be utilized to require environmental restoration standards.

4. Permit issuance for previously tolled Rate of Growth Ordinance (ROGO) allocations, Non-Residential Rate of Growth Ordinance (NROGO) allocations or building permits/Floodplain Development Permits. Building permits and allocations have been tolled under authority of Monroe County Resolutions 420-2005, 166-2006, 185-2007 & 219-2008 and 282-2011 as a result of the injunction prohibiting FEMA from issuing flood insurance policies under the National Flood Insurance Program which was imposed in the case of *Florida Key Deer et. al., v. Fugate et. al.*, 90-10037-CIV-Moore. In order for those persons whose allocations or whose building permits were tolled to be eligible for Federal flood insurance and meet their obligations under the Federal Endangered Species Act, the following is required:

- a. Owners with allocations who do not need coordination with FWS after they are processed through the Permit Referral Process:
 1. Have 180 days from the date of a County issued written notice to pick up their building permits;
or
 2. Have 300 days from the date of a county issued written notice, if there is a need to redesign an

onsite wastewater treatment system, to receive a permit from the Department of Health (DOH) and pick up their building permits.

- b. Owners with building permits who do not need coordination with FWS after they are processed through the Permit Referral Process:
 - 1. Have 180 days from the date of a County issued written notice, to recommence development and receive a passed inspection; or
 - 2. Have 300 days from the date of a County issued written notice, if there is a need to redesign an onsite wastewater treatment system to receive a permit from the DOH, recommence development and receive a passed inspection.
- c. Permit applications processed through the Permit Referral Process that result in a “may affect determination” for the proposed development through the application of the Species Assessment Guides which require the permittee to coordinate with FWS shall have a total of 360 days from the date of a County issued written notice to conclude the required coordination with FWS and pick up the building permit, and receive a Notice to Proceed from Monroe County. This timeframe may be extended by the Planning Director if the applicant can affirmatively demonstrate that he has timely and actively sought coordination.
- d. Properties for which a Permit has been issued and for which development has not commenced will be required to be processed through the Permit Referral Process. Permit reviews that result in a “may affect determination” for the proposed development through the application of the Species Assessment Guides which require the permittee to coordinate with FWS shall have a total of 360 days from the date of a County issued written notice to conclude the required coordination with FWS, commence development and receive a passed inspection from Monroe County. This timeframe may be extended by the Planning Director if the applicant can affirmatively demonstrate that he has timely and actively sought coordination.

Section 4. Severability.

If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, invalidate, or nullify the remainder of this Ordinance, but the effect thereof shall be confined to the section, paragraph, subdivision, clause, sentence or provision immediately involved in the controversy in which such judgment or decree shall be rendered.

Section 5. Conflicting Provisions.

In the case of direct conflict between any provision of this ordinance and a portion or provision of any appropriate federal, state or county law, rule, code or regulation, the more restrictive shall apply.

Section 6. Filing, Transmittal, and Effective Date.

This ordinance shall be filed in the Office of the Secretary of State of the State of Florida, and transmitted to the State Land Planning Agency, but shall not become effective until a notice is issued by the State Land Planning Agency or Administrative Commission approving the ordinance pursuant to Chapter 380, Florida Statutes, and after any appeal period has expired and the injunction has been lifted in the case of Florida Key Deer et. al., v. Fugate et. al., 90-10037-CIV-Moore.

Section 7. Codification

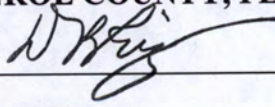
The provisions of this ordinance shall be included and incorporated into the Code of Ordinances of the County of Monroe, Florida, as an addition or amendment thereto and shall be appropriately numbered to conform to the uniform numbering system of the Code.

PASSED AND ADOPTED by the Board of County Commissioners of Monroe County, Florida at a regular meeting held on the 20th day of June, 2012.

Mayor David Rice	<u>Yes</u>
Mayor Pro Tem Kim Wigington	<u>Yes</u>
Commissioner Heather Carruthers	<u>Yes</u>
Commissioner George Neugent	<u>Yes</u>
Commissioner Sylvia Murphy	<u>Yes</u>

BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA

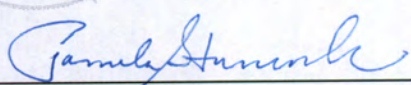
BY


Mayor David Rice

FILED FOR RECORD
2012 JUN 26 PM 3:53
DANNY L. KOLHAGE
CLERK, CIR. CT.
MONROE COUNTY, FL



(SEAL)
ATTEST: DANNY L. KOLHAGE, CLERK


DEPUTY CLERK

